

SENATE FILE 2088

H-8045

1 Amend Senate File 2088, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, after line 31 by inserting:
4 <Oe. Network services, including equipment and
5 software which support local area networks, campus
6 area networks, wide area networks and metro area
7 networks. Network services also include data network
8 services such as routers, switches, firewalls, virtual
9 private networks, intrusion detection systems, access
10 control, internet protocol load balancers, event
11 logging and correlation, and content caching. Network
12 services do not include services provided by the Iowa
13 communications network pursuant to chapter 8D or by
14 the public broadcasting division of the department of
15 education.>
16 2. Page 2, by striking lines 22 through 25 and
17 inserting <director.>
18 3. Page 3, line 1, after <8A.416> by inserting <and
19 shall not serve as an employee in any other executive
20 branch agency>
21 4. Page 3, line 19, after <acquisition> by
22 inserting <, utilization, or provision>
23 5. Page 3, line 27, after <Whether the> by
24 inserting <failure to grant a>
25 6. Page 4, after line 12 by inserting:
26 <(7) Whether the failure to grant a waiver would
27 jeopardize federal funding.>
28 7. Page 4, after line 30 by inserting:
29 <d. A participating agency may appeal the decision
30 of the chief information officer to the director within
31 seven calendar days following the decision of the chief
32 information officer. The director, after consultation
33 with the technology advisory council, shall respond
34 within fourteen days following the receipt of the
35 appeal.>
36 8. Page 4, after line 30 by inserting:
37 <e. The department of public defense, including
38 both the military division and the homeland security
39 and emergency management division, shall not be
40 required to obtain any information technology services
41 pursuant to this subchapter for the department of
42 public defense or its divisions that is provided by the
43 department pursuant to this chapter without the consent
44 of the adjutant general.>
45 9. Page 7, line 10, by striking <or other agencies>
46 10. Page 7, after line 25 by inserting:
47 <g. Encourage participating agencies to utilize
48 a print on demand strategy to reduce publication
49 overruns, excessive inventory, and obsolete printed
50 materials.>

1 11. Page 35, by striking lines 29 through 32.
2 12. Page 35, line 33, by striking <(d)> and
3 inserting <(c) (i)>
4 13. Page 36, after line 3 by inserting:
5 <(ii) The policy shall allow a director of
6 an executive branch agency who believes that the
7 agency will not be able to reach the applicable
8 target aggregate ratio to apply for a waiver of that
9 requirement through a five-person review board. The
10 review board shall consist of the director of the
11 department of management or a designee of the director,
12 three agency directors or the designees of those
13 directors as designated by the governor, and one
14 public member selected by the employee organization
15 representing the greatest number of executive branch
16 employees.>
17 14. Page 36, line 4, by striking <(e)> and
18 inserting <(d)>
19 15. Page 36, line 8, by striking <(f)> and
20 inserting <(e)>
21 16. Page 36, line 11, by striking <(g)> and
22 inserting <(f)>
23 17. Page 36, line 17, by striking <(h)> and
24 inserting <(g)>
25 18. By striking page 46, line 22, through page 52,
26 line 22, and inserting:
27 <DIVISION
28 ALCOHOLIC BEVERAGES
29 DIVISION — MICRO-DISTILLERIES
30 Sec. _____. Section 123.32, subsection 1, Code
31 Supplement 2009, is amended to read as follows:
32 1. *Filing of application.* An application for a
33 class "A", class "B", class "C", or class "E" liquor
34 control license, for a class "A" micro-distilled
35 spirits permit, for a retail beer permit as provided
36 in sections 123.128 and 123.129, or for a class "B",
37 class "B" native, or class "C" native retail wine
38 permit as provided in section 123.178, 123.178A, or
39 123.178B, accompanied by the necessary fee and bond,
40 if required, shall be filed with the appropriate city
41 council if the premises for which the license or permit
42 is sought are located within the corporate limits of a
43 city, or with the board of supervisors if the premises
44 for which the license or permit is sought are located
45 outside the corporate limits of a city. An application
46 for a class "D" liquor control license and for a class
47 "A" beer or class "A" wine permit, accompanied by the
48 necessary fee and bond, if required, shall be filed
49 with the division, which shall proceed in the same
50 manner as in the case of an application approved by

1 local authorities.

2 Sec. _____. NEW SECTION. 123.43A Micro-distilled
3 spirits — permit.

4 1. For the purposes of this section, unless the
5 context other requires:

6 a. "*Micro-distillery*" means a business with an
7 operational still which, combining all production
8 facilities of the business, produces and manufactures
9 less than fifty thousand proof gallons of distilled
10 spirits on an annual basis.

11 b. "*Micro-distilled spirits*" means distilled spirits
12 fermented, distilled, or, for a period of two years,
13 barrel matured at a micro-distillery. "*Micro-distilled*
14 *spirits*" also includes blended or mixed spirits
15 comprised solely of spirits fermented, distilled,
16 or, for a period of two years, barrel matured at a
17 micro-distillery.

18 2. Subject to rules of the division, a
19 micro-distillery holding a class "A" micro-distilled
20 spirits permit pursuant to this section may sell or
21 offer for sale micro-distilled spirits. As provided
22 in this section, sales may be made at retail for
23 off-premises consumption when sold on the premises of
24 the micro-distillery that manufactures micro-distilled
25 spirits. All sales shall be made through the state's
26 wholesale distribution system.

27 3. A micro-distillery shall not sell more than
28 one and one-half liters per person per day, of
29 micro-distilled spirits on the premises of the
30 micro-distillery. In addition, a micro-distillery
31 shall not directly ship micro-distilled spirits for
32 sale at retail. The micro-distillery shall maintain
33 records of individual purchases of micro-distilled
34 spirits at the micro-distillery for three years.

35 4. A micro-distillery shall not sell
36 micro-distilled spirits other than as permitted
37 in this chapter and shall not allow micro-distilled
38 spirits sold to be consumed upon the premises of
39 the micro-distillery. However, prior to sale,
40 micro-distilled spirits of no more than two ounces per
41 person per day may be sampled on the premises where
42 made, when no charge is made for the sampling.

43 5. A class "A" micro-distilled spirits permit for a
44 micro-distillery shall be issued and renewed annually
45 upon payment of a fee of five hundred dollars.

46 6. The sale of micro-distilled spirits to the
47 division for wholesale disposition and sale by the
48 division shall be subject to the requirements of this
49 chapter regarding such disposition and sale.

50 7. The division shall issue no more than three

1 permits under this section to a person. In addition,
2 a micro-distillery issued a permit under this section
3 shall file with the division all documents filed by
4 the micro-distillery with the alcohol and tobacco tax
5 and trade bureau of the United States department of
6 the treasury, including all production, storage, and
7 processing reports.>

8 19. Page 52, before line 23 by inserting:

9 <DIVISION _____
10 ALCOHOLIC BEVERAGES DIVISION — CHARITY BEER AND WINE
11 AUCTION PERMIT

12 Sec. _____. NEW SECTION. 123.173A Charity beer and
13 wine auction permit.

14 1. For purposes of this section, "*authorized*
15 *nonprofit entity*" includes a nonprofit entity which
16 has a principal office in the state, a nonprofit
17 corporation organized under chapter 504, or a foreign
18 corporation as defined in section 504.141, whose income
19 is exempt from federal taxation under section 501(c) of
20 the Internal Revenue Code.

21 2. An authorized nonprofit entity may, upon
22 application to the division and receipt of a charity
23 beer and wine auction permit from the division, conduct
24 a charity auction which includes beer and wine. The
25 application shall specify the date and time when the
26 charity beer and wine auction is to be conducted and
27 the premises in this state where the charity beer
28 and wine auction is to be physically conducted. The
29 applicant shall certify that the objective of the
30 charity beer and wine auction is to raise funds solely
31 to be used for educational, religious, or charitable
32 purposes and that the entire proceeds from the charity
33 beer and wine auction are to be expended for any of the
34 purposes described in section 423.3, subsection 78.

35 3. An authorized nonprofit entity shall be eligible
36 to receive only two charity beer and wine auction
37 permits during a calendar year and each charity beer
38 and wine auction permit shall be valid for a period not
39 to exceed thirty-six consecutive hours.

40 4. The authorized nonprofit entity conducting the
41 charity beer and wine auction shall obtain the beer
42 and wine to be auctioned at the charity beer and wine
43 auction from an Iowa retail beer permittee or an Iowa
44 retail wine permittee, or may receive donations of
45 beer or wine to be auctioned at the charity beer and
46 wine auction from persons who purchased the donated
47 beer or wine from an Iowa retail beer permittee or an
48 Iowa retail wine permittee and who present a receipt
49 documenting the purchase at the time the beer or wine
50 is donated. The authorized nonprofit entity conducting

1 the charity beer and wine auction shall retain a copy
2 of the receipt for a period of one year from the date
3 of the charity beer and wine auction.

4 5. Persons shall be physically present at the
5 charity beer and wine auction to be eligible to bid on
6 beer and wine sold at the charity auction.

7 6. The beer and wine sold at the charity beer
8 and wine auction shall be in original containers for
9 consumption off of the premises where the charity beer
10 and wine auction is conducted. No other alcoholic
11 beverage may be sold at the charity beer and wine
12 auction. A purchaser of beer or wine at a charity
13 beer and wine auction shall not take possession of the
14 beer or wine until the person is leaving the event. A
15 purchaser of beer or wine at a charity beer and wine
16 auction shall not open the container or consume or
17 permit the consumption of the beer or wine purchased on
18 the premises where the charity beer and wine auction is
19 conducted. A purchaser of beer or wine at a charity
20 beer and wine auction shall not resell the beer or
21 wine.

22 7. A liquor control licensee, beer permittee, or
23 wine permittee shall not purchase beer or wine at a
24 charity beer and wine auction. The charity beer and
25 wine auction may be conducted on a premises for which a
26 class "B" liquor control license or class "C" liquor
27 control license has been issued, provided that the
28 liquor control licensee does not participate in the
29 charity beer and wine auction, supply beer or wine to
30 be auctioned at the charity beer and wine auction, or
31 receive any of the proceeds of the charity beer and
32 wine auction.

33 Sec. _____. Section 123.179, Code 2009, is amended by
34 adding the following new subsection:

35 NEW SUBSECTION. 5. The fee for a charity beer and
36 wine auction permit is one hundred dollars.>

37 20. Page 52, before line 23 by inserting:

38 <DIVISION _____
39 ALCOHOLIC BEVERAGES DIVISION — HIGH
40 ALCOHOL BEER

41 Sec. _____. Section 123.3, subsection 5, Code 2009,
42 is amended to read as follows:

43 5. "*Alcoholic liquor*" or "*intoxicating liquor*" means
44 the varieties of liquor defined in subsections 3 and
45 33 which contain more than five percent of alcohol
46 by weight, beverages made as described in subsection
47 7 which beverages contain more than five percent of
48 alcohol by weight but which are not wine as defined in
49 subsection 37 or high alcoholic content beer as defined
50 in subsection 14A, and every other liquid or solid,

1 patented or not, containing spirits and every beverage
2 obtained by the process described in subsection 37
3 containing more than seventeen percent alcohol by
4 weight or twenty-one and twenty-five hundredths percent
5 of alcohol by volume, and susceptible of being consumed
6 by a human being, for beverage purposes. Alcohol
7 manufactured in this state for use as fuel pursuant to
8 an experimental distilled spirits plant permit or its
9 equivalent issued by the federal bureau of alcohol,
10 tobacco and firearms is not an *"alcoholic liquor"*.

11 Sec. _____. Section 123.3, Code 2009, is amended by
12 adding the following new subsection:

13 **NEW SUBSECTION. 14A. *"High alcoholic content beer"***
14 means beer which contains more than five percent of
15 alcohol by weight, but not more than ten percent of
16 alcohol by weight, that is made by the fermentation of
17 an infusion in potable water of barley, malt, and hops,
18 with or without unmalted grains or decorticated and
19 degerminated grains.

20 Sec. _____. Section 123.124, Code 2009, is amended to
21 read as follows:

22 **123.124 Permits — classes.**

23 Permits for the manufacture and sale, or sale of
24 beer shall be divided into ~~four~~ six classes, known
25 as class "A", special class "A", class "AA", special
26 class "AA", class "B", or class "C" permits. A class
27 "A" permit allows the holder to manufacture and sell
28 beer at wholesale. A holder of a special class "A"
29 permit may only manufacture beer to be consumed on
30 the licensed premises for which the person also holds
31 a class "C" liquor control license or class "B" beer
32 permit and to be sold to a class "A" permittee for
33 resale purposes. A class "AA" permit allows the holder
34 to manufacture and sell high alcoholic content beer at
35 wholesale. A holder of a special class "AA" permit
36 may only manufacture high alcoholic content beer to
37 be consumed on the licensed premises for which the
38 person also holds a class "C" liquor control license
39 or class "B" beer permit and to be sold to a class "AA"
40 permittee for resale purposes. A class "B" permit
41 allows the holder to sell beer to consumers at retail
42 for consumption on or off the premises. A class "C"
43 permit allows the holder to sell beer to consumers at
44 retail for consumption off the premises.

45 Sec. _____. Section 123.130, unnumbered paragraph 1,
46 Code 2009, is amended to read as follows:

47 Any person holding a class "A" permit issued by
48 the division shall be authorized to manufacture and
49 sell, or sell at wholesale, beer for consumption off
50 the premises, such sales within the state to be made

1 only to persons holding subsisting class "A", "B", or
2 "C" permits, or liquor control licenses issued in
3 accordance with the provisions of this chapter. The
4 ~~holder of a class "A" permit may manufacture beer of~~
5 ~~more than five percent alcohol by weight for shipment~~
6 ~~outside this state only. However, a class "A", class~~
7 ~~"AA", or special class "AA" permit does not grant~~
8 ~~authority to manufacture wine as defined in section~~
9 ~~123.3, subsection 37.~~

10 Sec. _____. Section 123.134, Code 2009, is amended by
11 adding the following new subsection:

12 NEW SUBSECTION. 1A. The annual permit fee for a
13 class "AA" or special class "AA" permit is five hundred
14 dollars.

15 Sec. _____. Section 123.135, subsection 1, Code 2009,
16 is amended to read as follows:

17 1. A manufacturer, brewer, bottler, importer, or
18 vendor of beer or any agent thereof desiring to ship
19 or sell beer, or have beer brought into this state
20 for resale by a class "A" permittee shall first make
21 application for and be issued a brewer's certificate
22 of compliance by the administrator for that purpose.
23 The certificate of compliance expires at the end
24 of one year from the date of issuance and shall be
25 renewed for a like period upon application to the
26 administrator unless otherwise revoked for cause. Each
27 application for a certificate of compliance or renewal
28 of a certificate shall be accompanied by a fee of
29 ~~one five hundred dollars payable to the division. Each~~
30 ~~holder of a certificate of compliance shall furnish the~~
31 ~~information in the form the administrator requires. A~~
32 ~~brewer whose plant is located in Iowa and who otherwise~~
33 ~~holds a class "A" beer permit to sell beer at wholesale~~
34 ~~is exempt from the fee, but not from the terms and~~
35 ~~conditions of the permit. The holder of a special~~
36 ~~class "A" permit is exempt from the requirements of~~
37 ~~this section.>~~

38 21. Page 53, by striking lines 1 through 3 and
39 inserting <year. This section does not repeal any
40 authority previously granted to the division in chapter
41 123.>

42 22. Page 53, before line 16 by inserting:

43 <DIVISION _____
44 ALCOHOLIC LIQUOR SALES

45 Sec. _____. NEW SECTION. 123.24A Retail sales at
46 less than cost — penalty.

47 1. A retailer shall not offer to sell, or sell,
48 at retail, alcoholic liquor at less than the cost to
49 the retailer. A retailer who violates this section is
50 guilty of a simple misdemeanor. For purposes of this

1 section, "cost to the retailer" means the true invoice
2 cost of the alcoholic liquor to the retailer plus
3 the cost of doing business by the retailer which is
4 presumed to be eight percent of the true invoice cost
5 in the absence of proof of a lesser or higher cost.

6 2. Evidence of advertisement, offering to sell,
7 or sale of alcoholic liquor by any retailer at less
8 than the cost to the retailer shall be evidence of a
9 violation of this section.>

10 23. By striking page 53, line 16, through page 56,
11 line 1, and inserting:

12 <DIVISION _____

13 ALCOHOLIC BEVERAGES DIVISION — DIRECT

14 SHIPMENT OF WINE

15 Sec. _____. Section 123.173, subsection 1, Code 2009,
16 is amended to read as follows:

17 1. ~~Permits~~ Except as provided in section 123.187,
18 permits exclusively for the sale or manufacture and
19 sale of wine shall be divided into four classes, and
20 shall be known as class "A", "B", "B" native, or "C"
21 native wine permits.

22 Sec. _____. Section 123.183, Code 2009, is amended to
23 read as follows:

24 **123.183 Wine gallonage tax and related funds.**

25 1. In addition to the annual permit fee to be paid
26 by each class "A" wine permittee, a wine gallonage tax
27 shall be levied and collected from each class "A" wine
28 permittee on all wine manufactured for sale and sold
29 in this state at wholesale and on all wine imported
30 into this state for sale at wholesale and sold in this
31 state at wholesale. A wine gallonage tax shall also
32 be levied and collected on native wine manufactured as
33 provided in section 123.56, and on the direct shipment
34 of wine pursuant to section 123.187. The rate of
35 the wine gallonage tax is one dollar and seventy-five
36 cents for each wine gallon. The same rate shall apply
37 for the fractional parts of a wine gallon. The wine
38 gallonage tax shall not be levied or collected on wine
39 sold by one class "A" wine permittee to another class
40 "A" wine permittee.

41 2. a. Revenue collected from the wine gallonage
42 tax on wine manufactured for sale and sold in this
43 state shall be deposited in the wine gallonage tax fund
44 as created in this section.

45 b. A wine gallonage tax fund is created in the
46 office of the treasurer of state. Moneys deposited in
47 the fund are appropriated to the department of economic
48 development as provided in section 15E.117. Moneys in
49 the fund are not subject to section 8.33.

50 3. The revenue collected from the wine gallonage

1 tax on wine imported into this state for sale at
2 wholesale and sold in this state at wholesale, native
3 wine manufactured as provided in section 123.56, and
4 wine subject to direct shipment as provided in section
5 123.187, shall be deposited in the beer and liquor
6 control fund created in section 123.53.

7 Sec. _____. Section 123.187, Code 2009, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 **123.187 Direct shipment of wine — licenses and**
11 **requirements.**

12 1. A wine manufacturer licensed or permitted
13 pursuant to laws regulating alcoholic beverages in this
14 state or another state may apply for a wine direct
15 shipper license, as provided in this section. For the
16 purposes of this section, a "*wine manufacturer*" means a
17 person who processes the fruit, vegetables, dandelions,
18 clover, honey, or any combination of these ingredients,
19 by fermentation into wines.

20 2. a. The administrator shall issue a wine
21 direct shipper license to a wine manufacturer who
22 submits a written application for the license on a
23 form to be established by the administrator by rule,
24 accompanied by a true copy of the manufacturer's
25 current alcoholic beverage license or permit and a copy
26 of the manufacturer's winery license issued by the
27 federal alcohol and tobacco tax and trade bureau.

28 b. An application submitted pursuant to paragraph
29 "a" shall be accompanied by a license fee in the amount
30 of twenty-five dollars.

31 c. An application submitted pursuant to paragraph
32 "a" shall also be accompanied by a bond in the amount
33 of five thousand dollars in the form prescribed and
34 furnished by the division with good and sufficient
35 sureties to be approved by the division conditioned
36 upon compliance with this chapter.

37 d. A license issued pursuant to this section may
38 be renewed annually by resubmitting the information
39 required in paragraph "a", accompanied by the
40 twenty-five dollar license fee.

41 3. The direct shipment of wine pursuant to this
42 section shall be subject to the following requirements
43 and restrictions:

44 a. Wine may only be shipped by a wine direct
45 shipper licensee to a resident of this state who is
46 at least twenty-one years of age, for the resident's
47 personal use and consumption and not for resale.

48 b. Wine subject to direct shipping shall be
49 properly registered with the federal alcohol and
50 tobacco tax and trade bureau, and fermented on the

1 winery premises of the wine direct shipper licensee.
2 c. All containers of wine shipped directly to
3 a resident of this state shall be conspicuously
4 labeled with the words CONTAINS ALCOHOL: SIGNATURE OF
5 PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY or shall
6 be conspicuously labeled with alternative wording
7 preapproved by the administrator.
8 d. All containers of wine shipped directly to a
9 resident of this state shall be shipped by an alcohol
10 carrier licensed as provided in subsection 6.
11 4. a. In addition to the annual license fee,
12 a wine direct shipper licensee shall remit to the
13 division an amount equivalent to the wine gallonage tax
14 at the rate specified in section 123.183 for deposit
15 in the beer and liquor control fund created in section
16 123.53. The amount shall be remitted at the same time
17 and in the same manner as provided in section 123.184,
18 and the ten percent penalty specified therein shall be
19 applicable.
20 b. Shipment of wine pursuant to this subsection
21 does not require a refund value for beverage container
22 control purposes under chapter 455C.
23 5. A wine direct shipper licensee shall be deemed
24 to have consented to the jurisdiction of the division
25 or any other agency or court in this state concerning
26 enforcement of this section and any related laws,
27 rules, or regulations. A licensee shall permit the
28 division to perform an audit of shipping records upon
29 request.
30 6. a. Wine subject to direct shipment within this
31 state pursuant to this section shall be delivered only
32 by a carrier having obtained from the division an
33 alcohol carrier license. An alcohol carrier license
34 shall be issued upon payment of a one hundred dollar
35 license fee, and shall be subject to requirements, and
36 issued pursuant to application forms, to be determined
37 by the administrator by rule.
38 b. An alcohol carrier licensee shall not deliver
39 wine to any person under twenty-one years of age, or
40 to any person who either is or appears to be in an
41 intoxicated state or condition. A licensee shall
42 obtain valid proof of identity and age prior to
43 delivery, and shall obtain the signature of an adult
44 as a condition of delivery.
45 c. An alcohol carrier licensee shall maintain
46 records of wine shipped which include the license
47 number and name of the wine manufacturer, quantity
48 of wine shipped, recipient's name and address, and
49 an electronic or paper form of signature from the
50 recipient of the wine. Records shall be submitted to

1 the division on a monthly basis in a form and manner to
2 be determined by the division by rule.

3 7. A violation of this section shall subject a
4 licensee to the penalty provisions of section 123.39.>

5 24. Page 58, line 26, after <affairs.> by inserting
6 <The term of office for voting members is four years.>

7 25. Page 83, line 2, by striking <one thousand
8 two hundred> and inserting <three thousand>

9 26. Page 83, lines 6 and 7, by striking
10 <one thousand two hundred> and inserting

11 <three thousand>

12 27. Page 83, after line 10 by inserting:

13 <Sec. _____. Section 99D.28, subsection 7, Code 2009,
14 is amended to read as follows:

15 7. A claimant agency or licensee, acting in good
16 faith, shall not be liable to any person for actions
17 taken to comply with pursuant to this section.>

18 28. Page 83, line 23, by striking <one thousand two
19 hundred> and inserting <three thousand>

20 29. Page 83, lines 27 and 28, by striking
21 <one thousand two hundred> and inserting

22 <three thousand>

23 30. Page 83, after line 31 by inserting:

24 <Sec. _____. Section 99F.19, subsection 7, Code 2009,
25 is amended to read as follows:

26 7. A claimant agency or licensee, acting in good
27 faith, shall not be liable to any person for actions
28 taken to comply with pursuant to this section.>

29 31. By striking page 114, line 31, through page
30 115, line 12.

31 32. Page 116, by striking lines 25 and 26 and
32 inserting:

33 <Sec. _____. REPEAL. Section 159A.5, Code 2009, is
34 repealed.>

35 33. Page 116, after line 27 by inserting:

36 <Sec. _____. ORGANIC ADVISORY COUNCIL —
37 FEES. Notwithstanding section 190C.5, for the fiscal
38 year beginning July 1, 2010, and ending June 30, 2011,
39 the department of agriculture and land stewardship
40 shall increase all fees that it establishes, imposes,
41 and collects pursuant to 21 IAC ch. 47 by ten percent.>

42 34. By striking page 118, line 9, through page 158,
43 line 15, and inserting:

44 <DIVISION _____

45 UNDERGROUND STORAGE TANKS

46 Sec. _____. Section 455B.474, subsection 1, paragraph
47 d, subparagraph (2), subparagraph division (e), Code
48 Supplement 2009, is amended to read as follows:

49 (e) (i) A site cleanup report which classifies
50 a site as either high risk, low risk, or no action

1 required shall be submitted by a groundwater
2 professional to the department with a certification
3 that the report complies with the provisions of this
4 chapter and rules adopted by the department. The
5 report shall be determinative of the appropriate
6 classification of the site. ~~However, if~~
7 (ii) The department shall accept or reject
8 the report of the risk classification of the site
9 and notify the owner or operator regarding the
10 determination within one hundred twenty days of
11 receiving the site cleanup report, unless the
12 department requests and the owner or operator grants an
13 extension of not more than sixty days for purposes of
14 receiving additional information from the groundwater
15 professional. If the department does not meet the time
16 requirements provided in this subparagraph subdivision,
17 the report and the recommendations shall be deemed
18 accepted as submitted.
19 (iii) If the report is found to be inaccurate
20 or incomplete, and if based upon information in the
21 report the risk classification of the site cannot
22 be reasonably determined by the department based
23 upon industry standards, the department shall work
24 with the groundwater professional to obtain the
25 additional information necessary to appropriately
26 classify the site. A groundwater professional who
27 knowingly or intentionally makes a false statement
28 or misrepresentation which results in a mistaken
29 classification of a site shall be guilty of a
30 serious misdemeanor and shall have the groundwater
31 professional's certification revoked under this
32 section.
33 Sec. _____. Section 455B.474, subsection 1, paragraph
34 f, subparagraphs (5), (6), and (7), Code Supplement
35 2009, are amended to read as follows:
36 (5) (a) A corrective action design report
37 submitted by a groundwater professional shall be
38 accepted by the department and shall be primarily
39 relied upon by the department to determine the
40 corrective action response requirements of the site.
41 ~~However, if~~
42 (b) The department shall accept or reject the
43 corrective action response requirements for the
44 site and notify the owner or operator regarding
45 the response requirements within one hundred twenty
46 days of receiving the design report, unless the
47 department requests and the owner or operator grants an
48 extension of not more than sixty days for purposes of
49 receiving additional information from the groundwater
50 professional. If the department does not meet the time

1 requirements provided in this subparagraph division,
2 the owner or operator shall proceed with corrective
3 action on the site and such action shall be considered
4 corrective action for purposes of section 455G.9.

5 (c) If the corrective action design report is found
6 to be inaccurate or incomplete, and if based upon
7 information in the report the appropriate corrective
8 action response cannot be reasonably determined by
9 the department based upon industry standards, the
10 department shall work with the groundwater professional
11 to obtain the additional information necessary
12 to appropriately determine the corrective action
13 response requirements. A groundwater professional who
14 knowingly or intentionally makes a false statement
15 or misrepresentation which results in an improper or
16 incorrect corrective action response shall be guilty of
17 a serious misdemeanor and shall have the groundwater
18 professional's certification revoked under this
19 section.

20 (6) Low risk sites shall be monitored as deemed
21 necessary by the department consistent with industry
22 standards. Monitoring shall not be required on a site
23 which has received a no further action certificate.
24 A site that has maintained a less than site specific
25 target level for four consecutive sampling events shall
26 be reclassified as a no further action site regardless
27 of exit monitoring criteria and guidance.

28 (7) An owner or operator may elect to proceed with
29 additional corrective action on the site. However,
30 any action taken in addition to that required pursuant
31 to this paragraph "f" shall be solely at the expense
32 of the owner or operator and shall not be considered
33 corrective action for purposes of section 455G.9,
34 unless otherwise previously agreed to by the board and
35 the owner or operator. Corrective action taken by an
36 owner or operator due to the department's failure to
37 meet the time requirements provided in subparagraph
38 (5), subparagraph division (b), shall be considered
39 corrective action for purposes of section 455G.9.

40 Sec. _____. Section 455B.479, Code 2009, is amended
41 to read as follows:

42 **455B.479 Storage tank management fee.**

43 An owner or operator of an underground storage
44 tank shall pay an annual storage tank management fee
45 of sixty-five dollars per tank of over one thousand
46 one hundred gallons capacity. ~~Twenty-three percent~~
47 ~~of the~~ The fees collected shall be deposited in the
48 storage tank management account of the groundwater
49 protection fund. ~~Seventy-seven percent of the fees~~
50 ~~collected shall be deposited in the Iowa comprehensive~~

1 ~~petroleum underground storage tank fund created in~~
2 ~~chapter 455G.~~

3 Sec. _____. Section 455E.11, subsection 2, paragraph
4 d, Code Supplement 2009, is amended to read as follows:

5 d. A storage tank management account. All fees
6 collected pursuant to section 455B.473, subsection 5,
7 and section 455B.479, shall be deposited in the storage
8 tank management account, ~~except those moneys deposited~~
9 ~~into the Iowa comprehensive petroleum underground~~
10 ~~storage tank fund pursuant to section 455B.479.~~

11 Funds Moneys deposited in the account shall be expended
12 for the following purposes:

13 (1) One thousand dollars is appropriated annually
14 to the Iowa department of public health to carry out
15 departmental duties under section 135.11, subsections
16 19 and 20, and section 139A.21.

17 (2) ~~Twenty-three percent of the proceeds of the~~
18 ~~fees imposed pursuant to section 455B.473, subsection~~
19 ~~5, and section 455B.479 shall be deposited in the~~
20 ~~account annually, up to a maximum of three hundred~~
21 ~~fifty thousand dollars. If twenty-three percent of the~~
22 ~~proceeds exceeds three hundred fifty thousand dollars,~~
23 ~~the excess shall be deposited into the fund created in~~
24 ~~section 455G.3. Three hundred fifty thousand dollars~~
25 is The moneys remaining in the account after the
26 appropriation in subparagraph (1) are appropriated from
27 the storage tank management account to the department
28 of natural resources for the administration of a state
29 storage tank program pursuant to chapter 455B, division
30 IV, part 8, and for programs which reduce the potential
31 for harm to the environment and the public health from
32 storage tanks.

33 ~~(3) The remaining funds in the account are~~
34 ~~appropriated annually to the Iowa comprehensive~~
35 ~~petroleum underground storage tank fund.~~

36 Sec. _____. Section 455G.3, subsection 3, Code 2009,
37 is amended by adding the following new paragraph:

38 NEW PARAGRAPH. d. To establish a no further action
39 account. On July 1, 2010, the balance of the account
40 shall be five million dollars. On or after that
41 date, the board shall not transfer any moneys from the
42 account to any other account or fund and moneys in the
43 account shall only be used for purposes provided in
44 this paragraph. Moneys in the account may be used to
45 reimburse costs associated with a corrective action in
46 response to high risk conditions caused by a release
47 at a site for which a no further action certificate
48 has been issued when the high risk conditions are not
49 caused by a release which occurred after the issuance
50 of the no further action certificate.

1 Sec. _____. Section 455G.3, Code 2009, is amended by
2 adding the following new subsections:
3 NEW SUBSECTION. 6. Each fiscal year, there is
4 appropriated from the Iowa comprehensive petroleum
5 underground storage tank fund to the department of
6 natural resources five hundred thousand dollars for
7 purposes of technical review support for underground
8 storage tank inspections conducted by nongovernmental
9 entities. During the fiscal year beginning July 1,
10 2010, from the moneys appropriated in this subsection,
11 the department shall use up to one hundred thousand
12 dollars for purposes of database modifications
13 necessary to accept external data regarding underground
14 storage tank inspections conducted by nongovernmental
15 entities.
16 NEW SUBSECTION. 7. Each fiscal year, there is
17 appropriated from the Iowa comprehensive petroleum
18 underground storage tank fund to the department
19 of agriculture and land stewardship five hundred
20 thousand dollars for purposes of inspecting motor
21 fuel, including salaries, support, maintenance, and
22 miscellaneous purposes.
23 NEW SUBSECTION. 8. Each fiscal year, there is
24 appropriated from the Iowa comprehensive petroleum
25 underground storage tank fund to the department
26 of natural resources two hundred fifty thousand
27 dollars for purposes of providing a grant to a
28 nonprofit corporation offering underground storage
29 tank operations training and leak prevention courses
30 necessary to meet minimum requirements of the United
31 States environmental protection agency.
32 Sec. _____. Section 455G.4, subsection 1, paragraph
33 a, subparagraphs (3) and (5), Code Supplement 2009, are
34 amended to read as follows:
35 ~~(3) The commissioner of insurance, or the~~
36 ~~commissioner's designee. An employee of the department~~
37 ~~of management who has been designated as a risk manager~~
38 ~~by the director of the department of management.~~
39 ~~(5) Two owners or operators appointed by the~~
40 ~~governor. One of the owners or operators appointed~~
41 ~~pursuant to this subparagraph shall have~~ The governor
42 shall appoint only one of the following:
43 (a) An owner or operator who has been a petroleum
44 systems insured through the underground storage tank
45 insurance fund as it existed on June 30, 2004, or a
46 successor to the underground storage tank insurance
47 fund and shall have been an insured through the
48 insurance account of the comprehensive petroleum
49 underground storage tank fund on or before October
50 26, 1990. ~~One of the owners or operators appointed~~

1 ~~pursuant to this subparagraph~~
2 (b) A member of the petroleum marketers and
3 convenience stores of Iowa.
4 (06) One member appointed by the governor shall be
5 an owner or operator that is self-insured.
6 Sec. _____. Section 455G.8, subsection 3, Code 2009,
7 is amended by striking the subsection.
8 Sec. _____. Section 455G.9, subsection 1, paragraphs
9 d and k, Code 2009, are amended to read as follows:
10 d. One hundred percent of the costs of corrective
11 action and third-party liability for a release
12 situated on property acquired by a county for
13 delinquent taxes pursuant to chapters 445 through
14 448, for which a responsible owner or operator able
15 to pay, other than the county, cannot be found. A
16 county is not a "responsible party" for a release
17 in connection with property which it acquires in
18 connection with delinquent taxes, and does not become
19 a responsible party by sale or transfer of property
20 so acquired; rather, the county is an agent. Actual
21 corrective action on the site shall be overseen by the
22 department, the board, and a certified groundwater
23 professional. Third-party liability specifically
24 excludes any claim, cause of action, or suit, for
25 personal injury including, but not limited to, loss
26 of use or of private enjoyment, mental anguish, false
27 imprisonment, wrongful entry or eviction, humiliation,
28 discrimination, or malicious prosecution. Reasonable
29 acquisition costs may be reimbursed; however, such
30 costs do not include any taxes or costs related to the
31 collection of taxes.
32 k. Pursuant to an agreement between the board and
33 the department of natural resources, assessment and
34 corrective action arising out of releases at sites for
35 which a no further action certificate has been issued
36 pursuant to section 455B.474, when the department
37 determines that an unreasonable risk to public health
38 and safety may still exist or that previously reported
39 upon site specific target levels have been exceeded.
40 At a minimum, the agreement shall address eligible
41 costs, contracting for services, and conditions under
42 which sites may be reevaluated.
43 Sec. _____. Section 455G.9, subsection 4, Code 2009,
44 is amended to read as follows:
45 4. *Minimum copayment schedule.*
46 a. An owner or operator shall be required to pay
47 the greater of five thousand dollars or eighteen
48 percent of the first eighty thousand dollars of the
49 total costs of corrective action for that release,
50 except when it is an innocent landowner claim in which

1 case a copayment is not required.

2 b. If a site's actual expenses exceed eighty
3 thousand dollars, the remedial account shall pay the
4 remainder, as required by federal regulations, of
5 the total costs of the corrective action for that
6 release, not to exceed one million dollars, except that
7 a county shall not be required to pay a copayment in
8 connection with a release situated on property acquired
9 in connection with delinquent taxes, as provided in
10 subsection 1, paragraph "d", unless subsequent to
11 acquisition the county actively operates a tank on the
12 property for purposes other than risk assessment, risk
13 management, or tank closure.

14 Sec. ____. EFFECTIVE UPON ENACTMENT AND RETROACTIVE
15 APPLICABILITY. The section of this division of this
16 Act amending section 455G.9, subsection 4, being deemed
17 of immediate importance, takes effect upon enactment
18 and applies retroactively to January 1, 2010.>

19 35. By striking page 162, line 5, through page 164,
20 line 34.

21 36. Page 165, after line 22 by inserting:

22 <Sec. ____.

23 NEW SECTION. 273.15 Advisory group.

24 1. The board of directors of each area education
25 agency shall appoint an advisory group to make
26 recommendations on policy, programs, and services to
27 the board. The advisory group shall provide input,
28 feedback, and recommendations to the board regarding
29 projected future needs, and shall provide a review
30 and response to any state-directed study or task
31 force report on area education agency efficiencies or
32 reorganization.

33 2. The advisory group shall consist of the
34 following:

35 a. A minimum of three superintendents employed by
36 school districts served by the area education agency;
37 at least one of whom shall represent a small school
38 district, at least one of whom shall represent a
39 medium-sized school district, and at least one of whom
40 shall represent a large school district.

41 b. A minimum of three principals employed by school
42 districts served by the area education agency; at least
43 one of whom shall represent an elementary school, at
44 least one of whom shall represent a middle school, and
45 at least one of whom shall represent a high school.

46 c. A minimum of four teachers employed by school
47 districts served by the area education agency; at least
48 one of whom shall represent early childhood teachers,
49 at least one of whom shall represent elementary
50 school teachers, at least one of whom shall represent
middle school teachers, and at least one of whom

1 shall represent high school teachers. At least one of
2 the teachers appointed shall also represent special
3 education and at least one of the teachers appointed
4 shall represent general education. At least one of the
5 teachers appointed shall represent related personnel,
6 including but not limited to media and technology
7 specialists and counselors.

8 d. A minimum of three parents or guardians of
9 school age children receiving services from the
10 area education agency, at least one of whom shall be
11 the parent or guardian of a child requiring special
12 education.

13 e. One member who represents accredited nonpublic
14 schools located within the boundaries of the area
15 education agency.

16 3. In appointing members of the advisory group
17 pursuant to subsection 2, the area education agency
18 shall collaborate with the superintendents and school
19 boards of the school districts served by the area
20 education agency.

21 4. All member appointments made pursuant to
22 subsection 2 shall comply with sections 69.16, 69.16A,
23 and 69.16C. In addition, every reasonable effort
24 shall be made to appoint members to provide balanced
25 representation based on age, experience, ethnicity,
26 district size, and geography.

27 5. The advisory group shall meet at least twice
28 annually and shall submit its recommendations in a
29 report to the board of directors of the area education
30 agency at least once annually. The report shall be
31 timely submitted to allow for consideration of the
32 recommendations prior to program planning and budgeting
33 for the following fiscal year.>

34 37. By striking page 165, line 23, through page
35 166, line 1.

36 38. Page 166, by striking lines 4 and 5 and
37 inserting:

38 <Sec. _____. REPEAL. Sections 261D.1, 261D.2,
39 280A.1, 280A.3, 280A.4, and 280A.5, Code 2009, are
40 repealed.

41 Sec. _____. REPEAL. Sections 261D.3 and 280A.2, Code
42 Supplement 2009, are repealed.>

43 39. Page 166, by striking lines 7 through 24.

44 40. Page 168, line 24, by striking <nine> and
45 inserting <thirteen>

46 41. Page 168, line 25, by striking <three> and
47 inserting <seven>

48 42. Page 174, line 34, by striking <center> and
49 inserting <bureau>

50 43. Page 176, line 32, after <3> by inserting <,

1 including but not limited to any timeframe established
2 for transition to a newly configured early childhood
3 Iowa area>
4 44. Page 177, line 32, after <22.> by inserting <An
5 area board member shall not vote on any measure that
6 has the potential to benefit the member's employer.>
7 45. Page 178, line 4, after <board.> by inserting
8 <The department may allow an area board to designate
9 another entity as fiscal agent if the area board
10 provides acceptable documentation and assurances that
11 meet appropriate state requirements for fiscal agents.>
12 46. Page 179, line 29, by striking <each school
13 district> and inserting <a school district or an area
14 board>
15 47. Page 179, line 33, after <district> by
16 inserting <or early childhood Iowa area>
17 48. Page 180, line 5, by striking <board> and
18 inserting <school board or area board>
19 49. Page 180, line 6, by striking <another school
20 district or> and inserting <a>
21 50. Page 180, line 14, after <district> by
22 inserting <or early childhood Iowa area>
23 51. Page 180, lines 17 and 18, by striking <school
24 improvement> and inserting <early care needs>
25 52. Page 180, line 22, by striking <education> and
26 inserting <educational, health, social, and emotional
27 needs>
28 53. Page 181, line 29, after <services> by
29 inserting <or social work>
30 54. Page 182, line 7, after <district> by inserting
31 <or early childhood Iowa area>
32 55. Page 182, line 12, after <district> by
33 inserting <or early childhood Iowa area>
34 56. Page 182, by striking lines 13 and 14 and
35 inserting <any related services or programs provided
36 by other>
37 57. Page 197, by striking lines 25 through 31
38 and inserting <unexpended shall be remitted to the
39 successor early childhood Iowa board designated to
40 serve that area. The department shall implement
41 measures to ensure there is continuity of services
42 in the transition from the community empowerment
43 initiative to the early childhood Iowa initiative.
44 Each early childhood Iowa area board shall ensure
45 that any existing contracts between the predecessor
46 community empowerment area board and service providers
47 are provided to the fiscal agent for the early
48 childhood area board so that continuity of service is
49 maintained.>
50 58. By striking page 199, line 15, through page

1 200, line 9.

2 59. By striking page 200, line 26, through page
3 211, line 6, and inserting:

4 <Sec. _____. **NEW SECTION. 685.1 Definitions.**

5 1. "*Claim*" means any request or demand, whether
6 pursuant to a contract or otherwise, for money or
7 property and whether the state has title to the money
8 or property, which is made to an officer, employee,
9 agent, or other representative of the state or to a
10 contractor, grantee, or other person if the money or
11 property is to be spent or used on the state's behalf
12 or to advance a state program or interest, and if the
13 state provides any portion of the money or property
14 which is requested or demanded, or if the state will
15 reimburse directly or indirectly such contractor,
16 grantee, or other person for any portion of the money
17 or property which is requested or demanded. "*Claim*"
18 does not include any requests or demands for money
19 or property that the state has paid to an individual
20 as compensation for state employment or as an income
21 subsidy with no restrictions on that individual's use
22 of the money or property.

23 2. a. "*Knowing*" or "*knowingly*" means that a person
24 with respect to information, does any of the following:

25 (1) Has actual knowledge of the information.

26 (2) Acts in deliberate ignorance of the truth or
27 falsity of the information.

28 (3) Acts in reckless disregard of the truth or
29 falsity of the information.

30 b. "*Knowing*" or "*knowingly*" does not require proof
31 of specific intent to defraud.

32 3. "*Original source*" means an individual who has
33 direct and independent knowledge of the information on
34 which the allegations are based and has voluntarily
35 provided the information to the state before filing
36 an action under this chapter which is based on the
37 information.

38 4. "*Qui tam plaintiff*" means a private plaintiff who
39 brings an action under this chapter on behalf of the
40 state.

41 Sec. _____. **NEW SECTION. 685.2 Acts subjecting**
42 **person to treble damages, costs, and civil penalties —**
43 **exceptions.**

44 1. A person who commits any of the following acts
45 is liable to the state for a civil penalty of not
46 less than five thousand dollars and not more than ten
47 thousand dollars plus three times the amount of damages
48 which the state sustains because of the act of that
49 person:

50 a. Knowingly presents, or causes to be presented, a

1 false or fraudulent claim for payment or approval.
2 *b.* Knowingly makes, uses, or causes to be made or
3 used, a false record or statement material to a false
4 or fraudulent claim.
5 *c.* Conspires to commit a violation of paragraph
6 "a", "b", "d", "e", "f", or "g".
7 *d.* Has possession, custody, or control of property
8 or money used, or to be used, by the state and
9 knowingly delivers, or causes to be delivered, less
10 than all of that money or property.
11 *e.* Is authorized to make or deliver a document
12 certifying receipt of property used, or to be used, by
13 the state and, intending to defraud the state, makes or
14 delivers the receipt without completely knowing that
15 the information on the receipt is true.
16 *f.* Knowingly buys, or receives as a pledge of an
17 obligation or debt, public property from an officer
18 or employee of the state, or a member of the Iowa
19 national guard, who lawfully may not sell or pledge the
20 property.
21 *g.* Knowingly makes, uses, or causes to be made
22 or used, a false record or statement material to an
23 obligation to pay or transmit money or property to
24 the state, or knowingly conceals or knowingly and
25 improperly avoids or decreases an obligation to pay or
26 transmit money or property to the state.
27 2. Notwithstanding subsection 1, the court may
28 assess not less than two times the amount of damages
29 which the state sustains because of the act of the
30 person described in subsection 1, if the court finds
31 all of the following:
32 *a.* The person committing the violation furnished
33 officials of the state responsible for investigating
34 false claims violations with all information known to
35 such person about the violation within thirty days
36 after the date on which the person first obtained the
37 information.
38 *b.* The person fully cooperated with the state
39 investigation of such violation.
40 *c.* At the time the person furnished the state
41 with the information about the violation, a criminal
42 prosecution, civil action, or administrative action
43 had not commenced under this chapter with respect to
44 such violation, and the person did not have actual
45 knowledge of the existence of an investigation into
46 such violation.
47 3. A person violating this section shall also be
48 liable to the state for the costs of a civil action
49 brought to recover any such penalty or damages.
50 4. Any information furnished pursuant to subsection

1 2 is deemed confidential information exempt from
2 disclosure pursuant to chapter 22.

3 5. This section shall not apply to claims, records,
4 or statements made under Tit. X relating to state
5 revenue and taxation.

6 Sec. _____. NEW SECTION. 685.3 Investigations and
7 prosecutions — powers of prosecuting authority — civil
8 actions by individuals as qui tam plaintiffs and as
9 private citizens — jurisdiction of courts.

10 1. The attorney general shall diligently
11 investigate a violation under section 685.2. If the
12 attorney general finds that a person has violated or is
13 violating section 685.2, the attorney general may bring
14 a civil action under this section against that person.

15 2. a. A person may bring a civil action for a
16 violation of this chapter for the person and for the
17 state in the name of the state. The person bringing
18 the action shall be referred to as the qui tam
19 plaintiff. Once filed, the action may be dismissed
20 only if the court and the attorney general provide
21 written consent to the dismissal and the reasons for
22 such consent.

23 b. A copy of the complaint and written disclosure
24 of substantially all material evidence and information
25 the person possesses shall be served on the attorney
26 general pursuant to the Iowa rules of civil procedure.
27 The complaint shall also be filed in camera, shall
28 remain under seal for at least sixty days, and shall
29 not be served on the defendant until the court so
30 orders. The state may elect to intervene and proceed
31 with the action within sixty days after the state
32 receives both the complaint and the material evidence
33 and the information.

34 c. The state may, for good cause shown, move the
35 court for extensions of the time during which the
36 complaint remains under seal under paragraph "b".
37 Any such motions may be supported by affidavits or
38 other submissions in camera. The defendant shall not
39 be required to respond to any complaint filed under
40 this section until thirty days after the complaint is
41 unsealed and served upon the defendant pursuant to rule
42 1.302 of the Iowa rules of civil procedure.

43 d. Before the expiration of the sixty-day period or
44 any extensions obtained under paragraph "c", the state
45 shall do one of the following:

46 (1) Proceed with the action, in which case the
47 action shall be conducted by the state.

48 (2) Notify the court that the state declines to
49 take over the action, in which case the person bringing
50 the action shall have the right to conduct the action.

1 e. When a person brings an action under this
2 section, no person other than the state may intervene
3 or bring a related action based on the facts underlying
4 the pending action.

5 3. a. If the state proceeds with the action,
6 the state shall have the primary responsibility for
7 prosecuting the action, and shall not be bound by an
8 act of the person bringing the action. Such person
9 shall have the right to continue as a party to the
10 action, subject to the limitations specified in
11 paragraph "b".

12 b. (1) The state may move to dismiss the action
13 for good cause notwithstanding the objections of the
14 qui tam plaintiff if the qui tam plaintiff has been
15 notified by the state of the filing of the motion and
16 the court has provided the qui tam plaintiff with an
17 opportunity for a hearing on the motion.

18 (2) The state may settle the action with the
19 defendant notwithstanding the objections of the qui tam
20 plaintiff if the court determines, after a hearing,
21 that the proposed settlement is fair, adequate, and
22 reasonable under all of the circumstances. Upon a
23 showing of good cause, such hearing may be held in
24 camera.

25 (3) Upon a showing by the state that unrestricted
26 participation during the course of the litigation by
27 the person initiating the action would interfere with
28 or unduly delay the state's prosecution of the case, or
29 would be repetitious, irrelevant, or for purposes of
30 harassment, the court may, in its discretion, impose
31 limitations on the person's participation, including
32 but not limited to any of the following:

33 (a) Limiting the number of witnesses the person may
34 call.

35 (b) Limiting the length of the testimony of such
36 witnesses.

37 (c) Limiting the person's cross-examination of
38 witnesses.

39 (d) Otherwise limiting the participation by the
40 person in the litigation.

41 (4) Upon a showing by the defendant that
42 unrestricted participation during the course of the
43 litigation by the person initiating the action would
44 be for purposes of harassment or would cause the
45 defendant undue burden or unnecessary expense, the
46 court may limit the participation by the person in the
47 litigation.

48 c. If the state elects not to proceed with the
49 action, the person who initiated the action shall
50 have the right to conduct the action. If the state

1 requests, the state shall be served with copies of all
2 pleadings filed in the action and shall be supplied
3 with copies of all deposition transcripts at the
4 state's expense. When a person proceeds with the
5 action, the court, without limiting the status and
6 rights of the person initiating the action, may permit
7 the state to intervene at a later date upon a showing
8 of good cause.

9 d. Whether or not the state proceeds with the
10 action, upon a showing by the state that certain
11 actions of discovery by the person initiating the
12 action would interfere with the state's investigation
13 or prosecution of a criminal or civil matter arising
14 out of the same facts, the court may stay such
15 discovery for a period of not more than sixty days.
16 Such a showing shall be conducted in camera. The court
17 may extend the sixty-day period upon a further showing
18 in camera that the state has pursued the criminal or
19 civil investigation or proceedings with reasonable
20 diligence and any proposed discovery in the civil
21 action will interfere with the ongoing criminal or
22 civil investigation or proceedings.

23 e. Notwithstanding subsection 2, the state
24 may elect to pursue the state's claim through any
25 alternate remedy available to the state, including
26 any administrative proceeding to determine a civil
27 penalty. If any such alternate remedy is pursued in
28 another proceeding, the person initiating the action
29 shall have the same rights in such proceeding as such
30 person would have had if the action had continued under
31 this section. Any finding of fact or conclusion of law
32 made in such other proceeding that has become final,
33 shall be conclusive as to all such parties to an action
34 under this section. For purposes of this paragraph, a
35 finding or conclusion is final if it has been finally
36 determined on appeal to the appropriate court of the
37 state, if all time for filing such an appeal with
38 respect to the finding or conclusion has expired, or if
39 the finding or conclusion is not subject to judicial
40 review.

41 4. a. (1) If the state proceeds with an action
42 brought by a person under subsection 2, the person
43 shall, subject to subparagraph (2), receive at least
44 fifteen percent but not more than twenty-five percent
45 of the proceeds of the action or settlement of the
46 claim, depending upon the extent to which the person
47 substantially contributed to the prosecution of the
48 action.

49 (2) If the action is one which the court finds
50 to be based primarily on disclosures of specific

1 information, other than information provided by the
2 person bringing the action, relating to allegations or
3 transactions in a criminal, civil, or administrative
4 hearing, or in a legislative, administrative or state
5 auditor report, hearing, audit, or investigation, or
6 from the news media, the court may award an amount the
7 court considers appropriate, but in no case more than
8 ten percent of the proceeds, taking into account the
9 significance of the information and the role of the
10 person bringing the action in advancing the case to
11 litigation.

12 (3) Any payment to a person under subparagraph
13 (1) or (2) shall be made from the proceeds. Any such
14 person shall also receive an amount for reasonable
15 expenses which the appropriate court finds to have been
16 necessarily incurred, plus reasonable attorney fees and
17 costs. All such expenses, fees, and costs shall be
18 awarded against the defendant.

19 b. If the state does not proceed with an action
20 under this section, the person bringing the action or
21 settling the claim shall receive an amount which the
22 court decides is reasonable for collecting the civil
23 penalty and damages. The amount shall be not less than
24 twenty-five percent and not more than thirty percent
25 of the proceeds of the action or settlement and shall
26 be paid out of such proceeds. Such person shall also
27 receive an amount for reasonable expenses which the
28 court finds to have been necessarily incurred, plus
29 reasonable attorney fees and costs. All such expenses,
30 fees, and costs shall be awarded against the defendant.

31 c. Whether or not the state proceeds with the
32 action, if the court finds that the action was brought
33 by a person who planned and initiated the violation
34 of section 685.2 upon which the action was brought,
35 the court may, to the extent the court considers
36 appropriate, reduce the share of the proceeds of the
37 action which the person would otherwise receive under
38 paragraph "a" or "b", taking into account the role of
39 that person in advancing the case to litigation and any
40 relevant circumstances pertaining to the violation. If
41 the person bringing the action is convicted of criminal
42 conduct arising from the person's role in the violation
43 of section 685.2, the person shall be dismissed from
44 the civil action and shall not receive any share of
45 the proceeds of the action. Such dismissal shall not
46 prejudice the right of the state to continue the action
47 represented by the attorney general.

48 d. If the state does not proceed with the action
49 and the person bringing the action conducts the
50 action, the court may award to the defendant reasonable

1 attorney fees and expenses if the defendant prevails
2 in the action and the court finds that the claim of
3 the person bringing the action was clearly frivolous,
4 clearly vexatious, or brought primarily for purposes of
5 harassment.

6 5. a. A court shall not have jurisdiction over an
7 action brought by a former or present member of the
8 Iowa national guard under this chapter against a member
9 of the Iowa national guard arising out of such person's
10 services in the Iowa national guard.

11 b. An action shall not be filed under this chapter
12 against the federal government, the state or a local
13 government, or any officer, elected official, or
14 employee of any of these entities acting in the
15 person's official capacity.

16 c. A person shall not bring an action under
17 subsection 2 which is based upon allegations or
18 transactions which are the subject of a civil suit or
19 an administrative civil penalty proceeding in which the
20 state is already a party.

21 d. A court shall not have jurisdiction over an
22 action under this section based upon the public
23 disclosure of allegations or transactions in a
24 criminal, civil, or administrative hearing, or in a
25 legislative, administrative, or state auditor report,
26 hearing, audit, or investigation, or from the news
27 media, unless the action is brought by the attorney
28 general or the person bringing the action is an
29 original source of the information.

30 e. The state is not liable for expenses which a
31 person incurs in bringing an action under this section.

32 f. In a civil action brought under this section, a
33 prevailing defendant shall be entitled to reasonable
34 attorney fees and costs of defending the civil action.

35 6. Any employee, contractor, or agent who is
36 discharged, demoted, suspended, threatened, harassed,
37 or in any other manner discriminated against in the
38 terms and conditions of employment because of lawful
39 acts performed by the employee, contractor, or agent or
40 others in furtherance of an action under this section,
41 shall be entitled to all relief necessary to make the
42 employee, contractor, or agent whole. Such relief
43 shall include reinstatement with the same seniority
44 status such employee, contractor, or agent would have
45 had but for the discrimination, two times the amount of
46 back pay, interest on the back pay, and compensation
47 for any special damages sustained as a result of
48 the discrimination, including litigation costs and
49 reasonable attorney fees. An employee, contractor, or
50 agent may bring an action in the appropriate district

1 court of the state for the relief provided in this
2 subsection.

3 Sec. _____. NEW SECTION. 685.4 Procedure — statute
4 of limitations.

5 1. A subpoena requiring the attendance of a witness
6 at a trial or hearing conducted under this chapter may
7 be served at any place in the state, or through any
8 means authorized in the Iowa rules of civil procedure.

9 2. A civil action under this chapter may not be
10 brought more than six years after the date on which
11 the violation of section 684.2 is committed, or more
12 than three years after the date when facts material
13 to the right of action are known or reasonably should
14 have been known by the official of state charged with
15 responsibility to act in the circumstances, but in no
16 event more than ten years after the date on which the
17 violation is committed, whichever occurs last.

18 3. A civil action under this chapter may be brought
19 based on conduct occurring prior to the effective date
20 of this division of this Act, if the limitations period
21 pursuant to subsection 2 has not lapsed.

22 4. If the state elects to intervene and proceed
23 with an action brought under this chapter, the state
24 may file its own complaint or amend the complaint of a
25 person who has brought an action under section 685.3 to
26 clarify or add detail to the claims in which the state
27 is intervening and to add any additional claims with
28 respect to which the state contends it is entitled to
29 relief. For statute of limitations purposes, any such
30 state pleading shall relate back to the filing date
31 of the complaint of the person who originally brought
32 the action, to the extent that the claim of the state
33 arises out of the conduct, transactions, or occurrences
34 set forth, or attempted to be set forth, in the prior
35 complaint of that person.

36 5. In any action brought under section 685.3, the
37 state shall prove all essential elements of the cause
38 of action, including damages, by a preponderance of the
39 evidence.

40 6. Notwithstanding any other provision of law, the
41 Iowa rules of criminal procedure, or the Iowa rules of
42 evidence, a final judgment rendered in favor of the
43 state in any criminal proceeding charging fraud or
44 false statements, whether upon a verdict after trial
45 or upon a plea of guilty or nolo contendere, shall
46 estop the defendant from denying the essential elements
47 of the offense in any action which involves the same
48 transaction as in the criminal proceeding and which is
49 brought under section 685.3.

50 Sec. _____. NEW SECTION. 685.5 Jurisdiction.

1 1. Any action under section 685.3 may be brought
2 in any judicial district in which the defendant or, in
3 the case of multiple defendants, any one defendant can
4 be found, resides, transacts business, or in which any
5 act proscribed by section 685.2 occurred. A summons as
6 required by the Iowa rules of civil procedure shall be
7 issued by the appropriate district court and served in
8 accordance with the Iowa rules of civil procedure.

9 2. A seal on the action ordered by the court
10 under section 685.3 shall not preclude the state,
11 local government, or the person bringing the action
12 from serving the complaint, any other pleadings, or
13 the written disclosure of substantially all material
14 evidence and information possessed by the person
15 bringing the action on the law enforcement authorities
16 that are authorized under the law of the state or local
17 government to investigate and prosecute such actions
18 on behalf of such governments, except that such seal
19 applies to the law enforcement authorities so served to
20 the same extent as the seal applies to other parties in
21 the action.

22 Sec. _____. NEW SECTION. 685.6 Rulemaking authority.
23 The attorney general may adopt such rules and
24 regulations as are necessary to effectuate the purposes
25 of this chapter.

26 Sec. _____. ANNUAL REPORTING REQUIREMENT. On the
27 thirtieth day after the effective date of this division
28 of this Act, and on the anniversary of the effective
29 date of this division of this Act each year thereafter,
30 the attorney general shall submit to the chairpersons
31 and ranking members of the house and senate committees
32 on judiciary, the legislative caucus staffs, and the
33 legislative services agency, in electronic format, a
34 report containing all of the following information:

35 1. The number of cases the attorney general filed
36 during the previous calendar year under this chapter.

37 2. The number of cases private individuals filed
38 under this chapter during the previous calendar year,
39 including those cases that remain under seal, and
40 specifying all of the following for the cases:

41 a. The state or federal court in which each case
42 was filed and the total number filed in each court.

43 b. The state program or agency involved in each
44 case.

45 c. The number of cases filed by private individuals
46 who previously filed an action based on the same or
47 similar transaction or allegation under the federal
48 False Claims Act or the false claims act of another
49 state.

50 3. The amount recovered by the state in the form of

1 settlement, damages, penalties, and litigation costs,
2 if known, and specifying the following for each case:

3 a. The case number and parties for each case in
4 which there was a recovery.

5 b. The amount of funds recovered respectively for
6 damages, penalties, and litigation costs.

7 c. The percentage of the recovery and the amount
8 that the state paid to any private person who brought
9 the action.

10 Sec. _____. DEPARTMENT OF JUSTICE — FALSE CLAIMS ACT
11 ENFORCEMENT. There is appropriated from the general
12 fund of the state to the department of justice for the
13 fiscal year beginning July 1, 2010, and ending June 30,
14 2011, the following amount, or so much thereof as is
15 necessary, to be used for the purposes designated:

16 For the general office of the attorney general,
17 including salaries, support, maintenance, miscellaneous
18 purposes, and for not more than the following full-time
19 equivalent positions:

20 \$ 60,000
21 FTEs 1.00>

22 60. By striking page 220, line 17, through page
23 221, line 32, and inserting:

24 <DIVISION _____

25 DEPARTMENT OF HUMAN SERVICES INSTITUTIONS

26 Sec. _____. CONTINUUM OF MENTAL HEALTH SERVICES.

27 1. The department of human services shall develop
28 a state-of-the-art continuum of mental health
29 services and shall implement the continuum, subject
30 to the limitations of available funding. As part
31 of developing the continuum, the department shall
32 determine the most cost-effective means of delivering
33 mental health services through the institutions
34 administered by the department. In addition to other
35 needs, the continuum shall provide for the co-occurring
36 treatment needs of persons with mental illness who also
37 have intellectual disabilities or a substance abuse
38 disorder.

39 2. It is anticipated that implementation of the
40 continuum will produce savings that will result in the
41 reversion of at least \$1,000,000 in appropriations made
42 for such services for the fiscal year beginning July 1,
43 2010, and that any additional savings will be invested
44 in community-based services.

45 3. The council on human services shall review and
46 approve the continuum developed by the department prior
47 to its implementation. After approval is granted, the
48 department shall commence implementation and notify
49 the chairpersons and ranking members of the standing
50 committees on human resources of the senate and house

1 of representatives and of the joint appropriations
2 subcommittee on health and human services.
3 4. The department of human services may adopt
4 administrative rules under section 17A.4, subsection
5 3, and section 17A.5, subsection 2, paragraph "b", to
6 implement the provisions of this section and the rules
7 shall become effective immediately upon filing or on a
8 later effective date specified in the rules, unless the
9 effective date is delayed by the administrative rules
10 review committee. Any rules adopted in accordance with
11 this section shall not take effect before the rules are
12 reviewed by the administrative rules review committee.
13 The delay authority provided to the administrative
14 rules review committee under section 17A.4, subsection
15 7, and section 17A.8, subsection 9, shall be applicable
16 to a delay imposed under this section, notwithstanding
17 a provision in those sections making them inapplicable
18 to section 17A.5, subsection 2, paragraph "b". Any
19 rules adopted in accordance with the provisions of this
20 section shall also be published as a notice of intended
21 action as provided in section 17A.4.>

22 61. Page 222, by striking lines 5 through 32.

23 62. By striking page 223, line 34, through page
24 224, line 12.

25 63. Page 246, line 30, by striking <REPEAL OF>

26 64. Page 247, after line 9 by inserting:

27 <Sec. _____. Section 135.107, subsection 5, paragraph
28 a, Code Supplement 2009, is amended to read as follows:

29 a. There is established an advisory committee to
30 the center for rural health and primary care consisting
31 of one representative, approved by the respective
32 agency, of each of the following agencies: the
33 department of agriculture and land stewardship, the
34 Iowa department of public health, the department of
35 inspections and appeals, the national institute for
36 rural health policy, the rural health resource center,
37 the institute of agricultural medicine and occupational
38 health, and the Iowa state association of counties.

39 The governor shall appoint two representatives of
40 consumer groups active in rural health issues and a
41 representative of each of two farm organizations active
42 within the state, a representative of an agricultural
43 business in the state, a representative of a critical
44 needs hospital, a practicing rural family physician,
45 a practicing rural physician assistant, a practicing
46 rural advanced registered nurse practitioner, and
47 a rural health practitioner who is not a physician,
48 physician assistant, or advanced registered nurse
49 practitioner, as members of the advisory committee.
50 The advisory committee shall also include as members

1 two state representatives, one appointed by the speaker
2 of the house of representatives and one by the minority
3 leader of the house, and two state senators, one
4 appointed by the majority leader of the senate and one
5 by the minority leader of the senate.>

6 65. Page 247, by striking line 17 and inserting:
7 <Sec. _____. REPEAL. Sections 135.28, 135N.1,
8 135N.2, 135N.3, 135N.4, 135N.5, 135N.6, and 142C.16,
9 Code 2009, are repealed.>

10 66. Page 248, after line 29 by inserting:

11 <DIVISION _____
12 DEPARTMENT OF HUMAN
13 SERVICES — LEVEL OF CARE

14 Sec. _____. LEVEL OF CARE EVALUATION. The department
15 of human services shall amend the medical assistance
16 program home and community-based services waiver for
17 persons with intellectual disabilities so that required
18 evaluations performed subsequent to the initial
19 diagnosis of mental retardation are for the purpose of
20 determining the appropriate level of care rather than
21 confirming the original diagnosis.>

22 67. Page 248, after line 29 by inserting:

23 <DIVISION _____
24 DEPARTMENT OF HUMAN
25 SERVICES — TRANSPORTATION SERVICES

26 Sec. _____. INCLUSION OF TRANSPORTATION
27 SERVICES. The department of human services shall amend
28 the medical assistance program home and community-based
29 services waiver for persons with intellectual
30 disabilities as necessary for employment-related
31 transportation to be covered by the supported community
32 living services provider.>

33 68. By striking page 249, line 12, through page
34 250, line 7.

35 69. Page 252, line 32, after <subdivision> by
36 inserting <and hired by the political subdivision>

37 70. Page 253, after line 3 by inserting:

38 <Sec. _____. Section 80B.11E, subsection 1, Code
39 2009, is amended to read as follows:

40 1. Notwithstanding any other provision of law to
41 the contrary, an individual who is not a certified law
42 enforcement officer may apply for attendance at the
43 law enforcement academy ~~at their own expense~~ if such
44 individual is sponsored by a law enforcement agency
45 that either intends to hire or has hired the individual
46 as a law enforcement officer on the condition that the
47 individual meets the minimum eligibility standards
48 described in subsection 2. The costs for attendance by
49 such an individual at the law enforcement academy shall
50 be paid as provided in section 80B.11B.>

1 71. Page 255, after line 14 by inserting:

2 <DIVISION

3 ONGOING PROGRAM REVIEW

4 Sec. _____. NEW SECTION. 8.71 Ongoing program review

5 — repeal dates.

6 1. The general assembly finds that a regular review
7 of the programs and projects administered by state
8 government is necessary to determine whether each
9 program and project is effectively and efficiently
10 meeting the needs for which created and whether the
11 needs remain in place. The general assembly further
12 finds that a regular, systematic review process can
13 identify the programs and projects that are no longer
14 relevant or functioning at a desirable level and can
15 eliminate or reorganize those programs and projects so
16 that state resources can be used most effectively or
17 diverted to other priorities.

18 2. The committees on state government of the
19 senate and house of representatives shall propose
20 legislation for consideration by the Eighty-fourth
21 General Assembly, 2011 Session, providing a staggered
22 schedule for establishing an automatic repeal date for
23 each program or project administered by a department of
24 state government over the succeeding five-year period.
25 The committees on state government shall consult with
26 the office of the governor and the department of
27 management in formulating the staggered schedule and
28 the office and department shall cooperate in providing
29 necessary information requested by either committee.
30 The repeal date provisions shall be implemented
31 in a manner so that any program or project that is
32 reauthorized by law is again subject to automatic
33 repeal five years after reauthorization.>

34 72. By renumbering as necessary.

COMMITTEE ON STATE GOVERNMENT

MASCHER of Johnson, Chairperson